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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-701

ROADWAY EXPRESS, INC.,
Petitioner

v.

J. D. MONK, PERCY GREEN, ROBERT MCPHERSON
and
ROBERT E. PIPER, JR., FRANK E. BROWN, JR.,
BOBBY STROMILE,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Roadway Express, Inc., petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A, *infra*) is reported at 599 F.2d 1378 (5th Cir. 1979). The amended judgment of the District Court is reproduced in

Appendix B, *infra*, and the District Court's unreported opinion on rehearing is reproduced in Appendix C, *infra*. The opinion of the District Court (Appendix D, *infra*) is reported at 73 F.R.D. 411 (W.D. La. 1977).

JURISDICTION

The judgment of the Court of Appeals was entered on August 3, 1979.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether attorneys who unreasonably and vexatiously multiplied proceedings in an action under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 may be personally assessed, pursuant to 28 U.S.C. § 1927, with attorneys' fees as part of the "excess costs" incurred by an opposing party as a result of such conduct?

STATUTES INVOLVED

28 U.S.C. § 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required by the court to satisfy personally such excess costs.

Section 706(k) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k), provides:

> In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

42 U.S.C. § 1988 provides in part:

> In any action or proceeding to enforce a provision of sections 1981, 1983, 1985, and 1986 of this title, ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

STATEMENT

A. Facts

On June 3, 1975, attorneys Robert E. Piper, Jr., Frank E. Brown, Jr., and Bobby Stromile filed a class action on behalf of three individuals against Roadway Express, Inc., the International Brotherhood of Teamsters and Teamsters Local No. 194. The complaint alleged violations of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. The jurisdiction of the District Court was invoked under section 706(f)(3) of Title VII, 42 U.S.C. § 2000e-5(f)(3), and 28 U.S.C. § 1343. During the course of the litigation, attorneys Piper, Brown and Stromile intentionally engaged in conduct which substantially multiplied the proceedings before the District Court, and which ultimately caused the dismissal of the plaintiffs' claims.

B. The Decision of the District Court

After an evidentiary hearing on Roadway's motion for costs, including attorneys' fees, the District Court denied Roadway its costs against the individual plaintiffs (App. B, pp. 9a-10a) but found that attorneys Piper, Brown and Stromile had unreasonably and vexatiously multiplied the proceedings, and thereby "escalated defendants' costs substantially." (App. D, p. 19a) A portion of Roadway's costs, including attorneys' fees, were assessed personally against the three attorneys pursuant to 28 U.S.C. § 1927. The District Court viewed section 1927 as contemplating "an equitable shifting of responsibility for unreasonable and vexatious costs from a party to his counsel." (App. D, p. 24a) Attorneys' fees were included in the award under the additional authority of section 706(k) of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1988.

C. The Decision of the Court of Appeals

A panel of the Court of Appeals agreed with the District Court that attorneys Piper, Brown and Stromile "are subject to personal liability for the excess costs generated by their unreasonable and vexatious multiplication of the proceedings" (App. A, p. 5a) but concluded that an award of "costs" under section 1927 may not include attorneys' fees, notwithstanding that section 706(k) of Title VII and 42 U.S.C. § 1988 allow attorneys' fees "as part of the costs."

REASONS FOR GRANTING THE WRIT

A. The Decision Below Conflicts With the Decisions of Other Courts of Appeals As to the Proper Construction of 28 U.S.C. § 1927.

As recognized by the Court of Appeals below, a clear division of authority exists concerning "the correct construction of § 1927 and the scope of allowable costs under the statute." (App. A, p. 5a) In *Browning Debentures Holders' Comm. v. DASA Corp.*, 560 F.2d 1078, 1087-89 (2d Cir. 1977), the Second Circuit held that attorneys' fees may be assessed as "costs" under section 1927. The District of Columbia Circuit also has recognized the availability of such an award, *Asai v. Castillo*, 593 F.2d 1222, 1224-25 (D.C. Cir. 1979), and, contrary to the opinion of the Court of Appeals below (App. A, p. 6a), in *Bonsukan v. United States Immigration & Naturalization Serv.*, 554 F.2d 2, 4 (1st Cir.), *cert. denied*, 434 U.S. 833 (1977), the First Circuit intimated a similar view of section 1927.

The Sixth Circuit, in *United States v. Ross*, 535 F.2d 346, 350-51 (6th Cir. 1976), indicated that attorneys' fees may not be assessed under the statute, and the Seventh Circuit, in *1507 Corp. v. Henderson*, 447 F.2d 540, 542 (7th Cir. 1971), specifically held that attorneys' fees may not be awarded under section 1927. In short, the courts of appeals are in direct and irreconcilable conflict.[1]

B. The Court of Appeals Has Decided An Important Question of Federal Law Which Has Not Been, But Should Be, Settled By This Court.

Although the statute was originally enacted in 1813, the proper construction and scope of an award under section 1927 never has been addressed by this Court. Petitioner respectfully submits that the issues presented in this case involve critical questions of federal law which must not be left in the conflicting state presently existing in the courts of appeals.

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[1] The Court of Customs and Patent Appeals has suggested that attorneys' fees could be "indirectly" assessed under § 1927. Meitzner v. Mindick, 549 F.2d 775, 784 & n.12 (C.C.P.A.), *cert. denied*, 434 U.S. 854 (1977). The Fourth Circuit is currently faced with the issue. Wheeler v. Anchor Continental Inc., 20 Fair Empl. Proc. Cas. 591(D.S.C. 1978), *appeal docketed*, No. 79-1116 (4th Cir. Feb. 14, 1979). *See also* App. A, pp. 5a-6a (citing conflicting district court decisions).

The parties are not always culpable participants in frivolous, unreasonable and vexatious litigation. At some point along the continuum of equity and fundamental fairness, a line must be drawn between attorney and client misconduct, and their respective responsibilities for the oppressive costs visited upon an opposing party because of such conduct. Section 1927 draws such a line.

In holding that section 1927 does not permit attorneys' fees to be assessed against lawyers liable for "costs" under the statute, the Court of Appeals ignored both the clear intent of Congress in Title VII and 42 U.S.C. § 1988 to include attorneys' fees as costs in certain actions,[2] and the effects of insulating irresponsible lawyers from meaningful accountability for their conduct. Indeed, the Court of Appeals' construction of section 1927 effectively restricts attorneys' fees liability to blameless individual parties who oftimes can least afford such liability, particularly in fair employment practice cases. "Fee shifting," a concept firmly established in this Court, *e.g.*, *Hall v. Cole*, 412 U.S. 1, 4 (1973), is warranted in this case both by the applicable statutes and the sound administration of justice. The decision below is incorrect as a matter of law and unjust as a matter of public policy.

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[2] *See, e.g.*, Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 260 & n.33 (1975) (noting that Title VII's § 706(k) is one of numerous, though exceptional, statutes which "make specific and explicit provisions for the allowance of attorneys' fees").

CONCLUSION

Therefore, petitioner respectfully requests that this Court grant this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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Appendices

APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT.

J. D. MONK et al.,
Plaintiffs,

v.

ROADWAY EXPRESS, INC., et al.,
Defendants-Appellees,

ROBERT E. PIPER, JR., et al.,
Movants-Appellants.

No. 77-2067

Aug. 3, 1979.

Appeal from the United States District Court for the Western District of Louisiana.

Before TUTTLE, TJOFLAT and HILL, Circuit Judges.

JAMES C. HILL, Circuit Judge:

In this case we examine the propriety of assessing attorneys' fees under 28 U.S.C. § 1927 and 42 U.S.C. §§ 1988, 2000e-5(k)[1] against the plaintiffs' attorneys in a

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[1] 28 U.S.C. § 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required by the court to satisfy personally such excess costs.

(*footnote continues*)

Title VII case. Finding that the three statutes relied on by the district court do not support the assessment of attorneys' fees against attorneys, we vacate that portion of the district court's judgment which awards attorneys' fees to the defendants at the plaintiffs' attorneys' expense, and we remand to the district court for modification of the judgment to reflect only the excess costs caused by the plaintiffs' attorneys' conduct.

On June 3, 1975, J. D. Monk, Percy Green, and Robert McPherson, individually and on behalf of others similarly situated, filed suit against Roadway Express, Inc. (Roadway) and Local Union No. 194 of the International Brotherhood of Teamsters for racial discrimination. The plaintiffs were represented by Robert C. Piper, Jr., Frank E. Brown, Jr., and Bobby Stromile, the appellants in the instant case.

On September 5, 1975, the plaintiffs commenced discovery by propounding interrogatories to Roadway. Roadway's motion for enlargement of time within which to answer interrogatories was filed and granted on

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(*footnote continued*)

42 U.S.C. § 1988 provides, in pertinent part:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1985, and 1986 of this title, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. § 2000e-5(k) provides:

> (k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

November 14, 1975. On January 5, 1976, Roadway answered the plaintiffs' interrogatories and simultaneously propounded interrogatories to the plaintiffs. Roadway filed a motion on April 13, 1976, for an order compelling the plaintiffs to answer their interrogatories. A hearing on the motion was scheduled for 10:00 a.m. on April 22, 1976, but the plaintiffs' attorneys failed to appear, requiring the hearing to be rescheduled for 3:00 p.m. on the same day. Following the hearing, the magistrate ordered the plaintiffs to answer the interrogatories on or before May 24, 1976.

At the same time that it had filed a motion to compel, Roadway had noticed depositions of each of the plaintiffs to be taken on May 6 and 7, 1976. The depositions of Monk and Green were taken, but McPherson could not be located by his attorney and his deposition was not taken.

The plaintiffs' lack of cooperation in the defendants' pretrial discovery efforts led Roadway to file two motions to dismiss. On May 18, 1976, Roadway moved to dismiss McPherson's complaint for failure to give his deposition, and on June 14, 1976, Roadway moved to dismiss the complaint of the plaintiffs, with prejudice, for failure to answer interrogatories. On June 16, 1976, the district court ordered the plaintiffs to show cause why their complaint should not be dismissed, with prejudice, and why they should not be taxed with all of the defendants' reasonable expenses, costs, and attorneys' fees. Pursuant to a hearing on the order, the district court dismissed the case without prejudice on June 30, 1976, but retained jurisdiction to determine whether the defendants were entitled to an award of expenses, costs, and attorneys' fees.

On October 5, 1976, the district court held an evidentiary hearing on the imposition of sanctions and/or the taxation of costs and attorneys' fees against the plaintiffs and their counsel. On January 6, 1977, the district court ordered certain costs, attorneys' fees, and expenses taxed

against the plaintiffs' attorneys on the grounds that their conduct was deliberate and vexatious in that they failed to diligently pursue the plaintiffs' interests and abide by the Federal Rules of Civil Procedure. The court found that the forced dismissal of the plaintiffs' claims was caused by the total and deliberate failure of their counsel to properly prosecute them, as evidenced by their failure to answer Roadway's interrogatories as ordered; their failure to produce McPherson for his deposition as previously agreed; their failure to advise their clients of their denomination as class representatives and the possible consequences of class representation; and their failure to file briefs twice requested by the court concerning this case's relation to a class action certification entered in the Western District of Texas. A motion for a rehearing on the motion to assess attorneys' fees and costs against the plaintiffs' attorneys was filed and denied. The plaintiffs' attorneys, Piper, Brown, and Stromile, appeal from the judgment against them in the amount of $17,372.53 for the attorneys' fees and costs incurred by Roadway in defending the law suit.

The appellants contend first that the district court erroneously assessed attorneys' fees against them under 28 U.S.C. § 1927 and 42 U.S.C. §§ 1988, 2000e-5(k), since § 1927 refers only to "excess costs" and §§ 1988 and 2000e-5(k) are applicable only to parties. They next contend that their conduct was not vexatious so that no award of costs under § 1927 should have been entered against them.

Looking first to the propriety of entering any award at all against the appellants under § 1927, we find that the district court's determinations regarding the vexatiousness of the appellants' behavior are not clearly erroneous. *See United States v. National Ass'n of Real Estate Boards*, 339 U.S. 485, 70 S.Ct. 711, 94 L.Ed. 1007 (1950); Fed.R.Civ.P. 52(a). The instances of misconduct related in the district court's ruling on the motion to assess costs and attorneys' fees adequately support the court's find-

ings of fact concerning the vexatious manner in which the appellants conducted the law suit. Thus, under § 1927, the appellants are subject to personal liability for the excess costs generated by their unreasonable and vexatious multiplication of the proceedings. Having determined that the appellants are liable for an award under § 1927, we turn to the proper scope of their liability.

The general American rule is that attorneys' fees are not ordinarily recoverable as costs. *E.g., Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391, 90 S.Ct. 616, 24 L.Ed.2d 593 (1969). Section 1927's reference to "costs" neither specifically includes nor specifically excludes attorneys' fees as allowable costs under the statute. Our research reveals a split among circuits concerning the correct construction of § 1927 and the scope of allowable costs under the statute.

The Second Circuit indicated clearly in *Browning Debenture Holders' Committee v. DASA Corp.*, 560 F.2d 1078, 1087-89 (2d Cir. 1977), that, where an attorney has been vexatious in increasing costs through improper motions, actions, or delays, he may be assessed, under § 1927, the "expenses, costs, and attorneys' fees reasonably incurred by the opposing party or parties in meeting such improper motions, action, or delays." Although the District of Columbia Circuit did not address the question as directly as did the Second Circuit, a recent case from the District of Columbia Circuit suggests that that circuit would rule similarly were it faced with a case where the attorney had acted vexatiously. *See Asai v. Castillo*, ____ U.S.App.D.C. ____, 593 F.2d 1222 (1979). In addition, several cases at the district court level have allowed attorneys' fees as part of a § 1927 award against an attorney. *Nemeroff v. Abelson*, 469 F.Supp. 630 (S.D.N.Y. 1979); *North American Foreign Trading Corp. v. Zale Corp.*, ____F.Supp.____ (S.D.N.Y. 1979); *Wheeler v. Anchor*

Continental, Inc., 19 Empl.Prac.Dec. (CCH) ¶9006 (D.S.C. 1978); *In re Complaint of Cosmopolitan Shipping Co.*, F.Supp. (slip op. issued 12-26-78) (S.D.N.Y. 1978).

On the otherhand, the Sixth Circuit, in *United States v. Ross*, 535 F.2d 346, 350-51 (6th Cir. 1976), concluded that the "costs" provided by § 1927 should be limited to taxable costs, recognizing in the course of that determination that attorneys' fees cannot be part of those costs. The Seventh Circuit had reached the same conclusion earlier in *1507 Corp. v. Henderson*, 447 F.2d 540, 542 (7th Cir. 1971). Three district courts, two of which are in this circuit, have since followed suit. *See Yarborough v. Texas Oklahoma Express, Inc.*, 86 Lab.Cas. (CCH) ¶11,256 (N.D. Tex. 1979); *Exhibitors Poster Exchange, Inc. v. National Screen Service Corp.*, 78 F.R.D. 192 (E.D. La. 1978); *Chrysler Corp. v. Lakeshore Commercial Finance Corp.*, 389 F.Supp. 1216 (E.D. Wis. 1975), *aff'd*, 549 F.2d 804 (7th Cir. 1977). In addition, the First Circuit, while not having clearly addressed the issue, suggests that attorneys' fees are not allowable in a § 1927 award, *see Bonsukan v. Immigration and Naturalization Service*, 554 F.2d 2, 4 (1st Cir.), *cert. denied*, 434 U.S. 833, 98 S.Ct. 118, 54 L.Ed.2d 93 (1977), and a fourth district court reaches the same result in construing similar statutory provisions for awards of costs, *see Lockett v. Hellenic Sea Transports Ltd.*, 60 F.R.D. 469 (E.D. Pa. 1973).

We agree with the Sixth Circuit in its observations that § 1927 should be strictly construed because it is penal in nature. *United States v. Ross*, 535 F.2d at 350. To read § 1927's provision for "costs" as including an award of attorneys' fees "would require us to ascribe to Congress a purpose to vary the meaning of that term without either statutory language or legislative history to support the unusual construction," as the Supreme Court was urged to do in construing the provision for "costs" in § 35 of the Lanham Act. *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 720, 87 S.Ct. 1404, 1408, 18 L.Ed.2d

475 (1967). The Court's observations in that case bear repeating in our endeavor to devine the Congressional intent underlying § 1927's provision for the assessment of costs against attorneys. "When a cause of action has been created by a statute which expressly provides the remedies for vindication of the cause, other remedies should not readily be implied." *Id.* at 720, 87 S.Ct. at 1408. Since "attorneys' fees are not ordinarily recoverable in the absence of a statute or enforceable contract providing therefor," *id.* at 717, 87 S.Ct. at 1407, and since § 1927's provision for assessment of costs against attorneys is an extraordinary remedy, we conclude, as did the Supreme Court with regard to § 35 of the Lanham Act, that "[a] judicially created compensatory remedy in addition to the express statutory remedies is inappropriate in this context," *id.* at 721, 87 S.Ct. at 1409.[2] We thus hold that the district court's inclusion of attorneys' fees in the award of costs, pursuant to § 1927, against the appellants was erroneous, and we vacate that portion of the judgment.

Our construction of § 1927 does not foreclose assessment of attorneys' fees against attorneys in every conceivable situation, it merely forecloses the imposition of such liability under § 1927. Moreover, new legislation

[2] We acknowledge that a panel of this circuit affirmed the assessment of jury expenses under § 1927 in *Harrell v. Joffrion*, 73 F.R.D. 267, 268 (W.D. La.), *aff'd without opinion*, 545 F.2d 167 (5th Cir. 1976). We point out, however, that the judgment in *Harrell v. Joffrion* was affirmed pursuant to Local Rule 21. Under that rule, the panel to whom the case is submitted must determine that an opinion in the case would have no precedential value before the rule is triggered. Given that fact, in conjuction with the fact that the basis for a Rule 21 affirmance is never subjected to the scrutiny of the entire court as are published opinions which are circulated among the court prior to their release, we are doubtful that a district court opinion affirmed without opinion pursuant to Rule 21 is Fifth Circuit authority to which we are bound in our ensuing opinions. Even if we were bound by *Harrell v. Joffrion*, we would decline to expand § 1927 further to include attorneys' fees.

specifically providing for such assessments can, of course, be enacted at Congress' will.

We note that the district court's reliance on 42 U.S.C. §§ 1988 and 2000e-5(k) in assessing attorneys' fees against the appellants does not alter the result in this case. Those sections provide for attorneys' fees awards against unsuccessful *parties* to a suit, and they focus on actions which are frivolous, unreasonable, and baseless in allowing awards against unsuccessful *plaintiffs*. *See, e.g., Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978); *Little v. Southern Electric Steel Co.*, 595 F.2d 998 (5th Cir. 1979). Nothing in the language of those statutes and nothing in the cases cited to us by the appellees leads us to believe that §§ 1988 and 2000e-5(k) authorize the imposition of attorneys' fees against an unsuccessful party's attorneys. Neither could the district court combine the provisions of those statutes with those of § 1927 to produce a hybrid result contemplated by none of the statutes.

In conclusion, we vacate the judgment of the district court and remand for determination of a proper award consistent with this opinion. We point out in closing that § 1927 provides only for *excess* costs caused by the plaintiffs' attorneys' vexatious behavior and consequent multiplication of the proceedings, and not for the total costs of the litigation.

VACATED and REMANDED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION
CIVIL ACTION

NUMBER: 750548

J. D. MONK, PERCY GREEN and ROBERT MCPHERSON
v.
ROADWAY EXPRESS, INC. AND LOCAL UNION NO. 194
OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Amended Judgment

This cause came on to be heard on defendant's motion for assessment of costs, attorney's fees and expenses, and the Court having heard the evidence and considered briefs of counsel, and pursuant to the written opinions of the Court dated January 6, 1977 and April 13, 1977; a judgment was rendered on May 5, 1977 and that judgment is amended to read as follows:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Roadway Express and against Robert E. Piper, Jr., Frank E. Brown, Jr. and Bobby Stromile, in the amount of Seventeen Thousand Three Hundred Seventy-Two and 53/100 Dollars ($17,372.53) together with legal interest thereon from date of judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claim for Five Thousand and No/100 Dollars ($5,000.00) of expenses incurred by Daniel E. Gunn, Vice-President of Roadway Express, Inc. is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for assessment of costs, attorney's fees and expenses against the plaintiffs, J. D. Monk, Percy

Green and Robert McPherson is hereby denied and the claim of Roadway Express, Inc. against J. D. Monk, Percy Green and Robert McPherson is dismissed with prejudice.

Shreveport, Louisiana, this *25th* day of May, 1977.

/S/ BEN C. DAWKINS, JR.

Ben C. Dawkins, Jr.
Senior United States District Judge

APPROVED AS TO FORM:

COOK, CLARK, EGAN, YANCY & KING

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By /S/JOHN L. SCHOBER, JR.

John L. Schober, Jr.

Attorney for Roadway Express, Inc.

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION
NO. 750548

J. D. MONK, PERCY GREEN,
and ROBERT MCPHERSON,
Individually and on Behalf of
All Others Similarly Situated,

v.

ROADWAY EXPRESS, INC., and LOCAL UNION NO. 194
OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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BEN C. DAWKINS, JR., SENIOR JUDGE

Ruling upon Motion for Rehearing
(By the malpractice insurer of Attorneys Piper, Brown, and Stromile)

We carefully have reviewed the respective briefs, in support of and in opposition to, the above motion and conclude, with one small exception, that the motion should be denied.

That exception is that, in paraphrasing the Court's minutes of April 7, 1976, and May 19, 1976, we stated "(Note: No brief on this subject ever filed by plaintiffs' counsel)." Plaintiffs' counsel, on June 1, 1976, (more than ten days from our minute entry of May 19, 1976,) did file a brief in "Opposition to Defendants motion to Dismiss Or Alternatively for Summary Judgment" [*sic*], wherein they did casually mention the class certification made by the United States District Court for the Western District of Texas in *Salinas v. Roadway Express, Inc., et al*, Civil Action No. S.A.-71-C.A.-254; but presented no solid factual basis for distinguishing between that case and the one before us. They merely speculated as to facts they *hoped* some day to establish by discovery, but furnished the Court with nothing in support of their hope. To this extent, and only *pro tanto*, is our ruling of January 6, 1977, amended.

We reiterate the penultimate paragraph of that ruling:

> "At the October 5, 1976, hearing, counsel for Piper, Brown and Stromile (representing their malpractice insurer) detected several errors in defendants' attorneys' time logs. Counsel should confer and confect a judgment in accordance with the above ruling deleting erroneously or duplicatively billed hours, but otherwise allowing all attorney fees and costs sought. Counsel for defendants justifiably worked hundreds of hours to defend this law suit which Piper, Brown, and Stromile improvidently enlarged and inadequately prosecuted, the cost of which they must now pay."

In this connection, in their brief filed on February 15, 1977, (at pages 3 and 4 thereof) defendants' counsel have made certain concessions as to reductions in their claims for attorney fees, costs, and expenses which should be taken into account. Likewise, defendants' counsel's claim for additional attorney fees, supported by the unopposed affidavit of M. Curtiss McKee, dated February 11, 1977, is allowed and should be included in such judgment.

Counsel for defendants shall present a judgment, approved as to form by counsel for plaintiffs' malpractice insurer, within fifteen days.

THUS DONE AND SIGNED, in Chambers, at Shreveport, Louisiana, this 13th day of April, 1977.

/S/BEN C. DAWKINS, JR.

Ben C. Dawkins, Jr.
United States Senior District Judge

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

(Caption Omitted in Printing)

For Plaintiffs	Messrs. ROBERT E. PIPER, JR. FRANK E. BROWN, JR. BOBBY STROMILE PIPER & BROWN 1617 Milam Street Shreveport, Louisiana 71103
For Defendants Roadway Express	JOHN L. SCHOBER, JR. JOE B. CORDILL, JR. Mid South Towers, Suite 806 Shreveport, Louisiana 71101
	M. CURTISS MCKEE FUSELIER, OTT, MCKEE & FLOWERS 1600 Standard Life Jackson, Mississippi 39205
Union	EDWARD B. CLOUTMAN, III MULLINAX, WELLS, MAÙZY & BAAB Post Office Box 47972 Dallas, Texas 75247
For Plaintiffs' Counsel In Matter of Attorneys Fees	HERSCHEL E. RICHARD, JR. CHARLES G. TUTT COOK, CLARK, EGAN, YANCEY & KING 600 Commercial National Bank Building Shreveport, Louisiana 71101

BEN C. DAWKINS, JR., SENIOR JUDGE

Ruling on Motion to Assess Costs, Attorney Fees, and Expenses

With much regret, we must note that this action presents a classic example of attorneys either failing to "look in the book," or, having done so, failing to abide by the plain meaning of the Federal Rules of Civil Procedure; and the most regrettable aspect of this was that it was done deliberately and "vexatiously."

Initiated as a would-be class action under Title VII of the Equal Employment Opportunity Act and the Civil Rights Act of 1866,[1] it now has descended, not only to a forced dismissal of all of plaintiffs' claims because of total and deliberate failure of their counsel properly to prosecute them, but to a determination by us as to whether, and how much, plaintiffs' counsel should pay to defendants for costs, expenses, and attorney fees.

After filing the action in this Court on September 3, 1975, apparently with no prior investigation as to the facts, plaintiffs' counsel did nothing of substance adequately to pursue the interests of their individual clients or of the purported class members. Finally, on June 30, 1976, we granted a motion to dismiss plaintiffs' claims for failure to answer interrogatories (and for other reasons shown *infra*).

The following series of events, condensed and paraphrased from the docket sheet, explains, at least in part, the bases for the motion to assess costs, attorney fees, and expenses now before us:

11-14-75	Motion and order signed for extension of time within which defendants could answer plaintiffs' interrogatories.
1- 5-76	Defendants' first interrogatories to plaintiffs filed.

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[1] 42 U.S.C. § 2000e-5 and 42 U.S.C. § 1981.

4- 7-76 Instruction to counsel to file briefs on the question of whether or not Judge Real's decision of 6-9-75 in *Salinas v. Roadway Express, Incorporated, et al*, S. A. 71 - C. A. 254, a case pending in the Western District of Texas, encompassed plaintiffs and the would-be class; plaintiffs' brief to be filed in 10 days, and defendants to respond within 10 days thereafter.

4-13-76 Notice of the depositions of Green, McPherson, and Monk to be taken 5-6-76 and 5-7-76.

4-13-76 Motion by defendants to compel answers to interrogatories filed 1-5-76. Magistrate Barton then allowed plaintiffs until 10:00 A.M. on 4-21-76 to answer the interrogatories, or show cause why plaintiffs' counsel should not be ordered to do so.

4-21-76 Plaintiffs' attorneys, Piper, Brown, and Stromile failed to appear at 10:00 A.M. due to inadvertence; the hearing was upset and rescheduled for 3:00 P.M. the same day. At 3:00 P.M. all attorneys were present. Plaintiffs were ordered to respond to defendants' interrogatories by 5-24-76. No attorney fees were assessed at that time because defendants did not comply with Local Rule 10(*l*), which requires that they present evidence that an attempt was made to reconcile their differences on objections to discovery.

5-19-76 Plaintiffs were directed to file a brief concerning the instruction given 4-7-76 within 10 days or face dismissal of the action. (Note: No brief on this subject ever filed by plaintiffs' counsel.)

6-14-76 Motion by defendants to dismiss for failure to answer interrogatories, filed.

6-16-76 Order directing plaintiffs to appear on 6-28-76 and show cause why their case should not be dismissed and reasonable costs assessed.

6-19-76 Motion by plaintiffs' counsel for continuance of rule to show cause ordered for 6-28-76 and order continuing hearing until 6-30-76.

6-30-76 Rule to show cause came on for hearing and case was dismissed with prejudice. Counsel were ordered to submit briefs on the question of costs, attorney fees, and expenses.

7-14-76 Plaintiffs' motion and Court's order allowing additional time for plaintiffs to conduct discovery with respect to the costs and attorney fees question.

7-14-76 Motion by Piper, Brown, and Stromile to withdraw as counsel.

10- 5-76 Motion for assessment of attorney fees and expenses came on for hearing.

Plaintiffs' counsel, Messrs. Piper, Brown, and Stromile, point to the fact that defendants failed to answer interrogatories propounded by them on September 2, 1975, until January 5, 1976. Piper, Brown, and Stromile would have us apply by analogy some aspect of the "clean hands" doctrine by arguing that, since defendants delayed in answering plaintiffs' interrogatories, plaintiffs equally were justified in delaying their answers. Plaintiffs' counsel obviously did not feel defendants' delay occasioned any real need for further action, because they never filed a motion to compel answers, pursuant to Rule 33(a) F. R. Civ. P. Furthermore, defendants had sought and received an extension of time within which to answer plaintiffs' interrogatories.

The action originally was set for trial on the merits on January 22, 1976. Defendants needed quick responses to their January 5, 1976, interrogatories because, although the original trial date had been upset, they knew a new trial date would be forthcoming shortly and they must have received answers to the interrogatories in order to decide which, if any, discovery depositions must be taken,

or what further defensive action must be conducted. They filed a motion to compel answers, and the motion was granted, to which plaintiffs *never* have responded and so admitted at the hearing held on June 30, 1976. (See Tr. of that hearing in record.)

Piper, Brown, and Stromile argue that Mr. Cordill, associate counsel for defendants, assured them that they would be given extra time after the date set by a Court order to answer interrogatories since taking the depositions on May 6 and 7 also would be burdensome. (1) Cordill said defendants *would* be agreeable to an extension of time (Piper, Brown, and Stromile Exhibit No. 4). (2) However, plaintiffs' counsel never applied for, or were granted, such an extension by the Court. (3) A Court order required answers by May 24, 1976, and defendants did not file their present motion to dismiss for failure to answer interrogatories and for attorney fees and costs until June 14, 1976, three weeks after the answers were due.

Plaintiffs' failure to respond to defendants' interrogatories was one of the reasons we dismissed the case (another being that their clients had expressed no further interest in it (Tr. 6/30/76, p. 3) and one reason for granting attorney fees and costs against plaintiffs' counsel, but there are others equally as strong.

Defendants gave notice on April 13, 1976, of taking plaintiff McPherson's deposition on May 6, 1976. That plaintiff did not appear on the 6th, so counsel agreed to recess the deposition until May 7, 1976. McPherson again failed to appear, so defendants moved to dismiss McPherson's claims. That motion was deferred to defendants' later motion to dismiss, which, as noted, was granted.

On April 7, 1976, counsel for plaintiffs were instructed to file briefs within ten days as to whether the class action certification entered by Judge Real on June 9, 1975, in

Salinas v. Rozdway, Inc., et al, then pending in the Western District of Texas, encompassed the would-be class in the action before us. No brief was filed by plaintiffs' counsel, even after warning was given to them on May 19, 1976.

These failures by Piper, Brown, and Stromile, as just described, escalated defendants' costs substantially; and excerpts from plaintiffs' depositions evidence that plaintiffs' counsel did not even advise their clients that they were named as class plaintiffs, and the possible consequences of that having been done.[2]

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[2] *MONK:*

"Q Well, do you know the people that you are . . . the names of the people that you are supposed to be representing?

A No, I am not saying . . . I am not sure . . . I don't know who I am representing, if I am representing anybody, I don't know.

Q Was it your intention in filing this suit, Mr. Monk, to represent anybody other than yourself?

A No, just . . . I filed this suit for me.

Q You don't claim to be representing anybody else then?

A No."

(Monk deposition pages 65 through 66, beginning at Line 20.)

"Q When you become a representative of other people, you take on certain responsibilities and liabilities for those people, and my question to you now is, are you willing to assume the responsibilities and liabilities that you have set out in your law suit here of representing other people?

A I wouldn't go as far as to say that, because I don't know anything about their case.

Q All right, sir; if this complaint is as I say it is, that, to-wit, that you are representing other people, do you want it that way?

(*footnote continues*)

It is obvious that plaintiffs' counsel purposefully enlarged and exaggerated the original claims about which

(*footnote continued*)

A Well, I don't know enough about the deal to represent anybody, because I don't know . . . ."

(Monk deposition page 67, beginning at Line 2.)

"Q Well, involved in class actions, Mr. Monk, as I told you earlier, there are some liabilities and some responsibilities imposed on the class representatives, and some of those are costs and expenses and possibly attorneys' fees; and I want to ask you now, if you are willing, on behalf of this class, the people that you describe in this complaint, are you willing to take on the responsibilities for whatever costs may be imposed, whatever expenses may be imposed, or whatever attorneys' fees may be assessed against you on their behalf? Are you willing to do that?

A I don't quite follow you; I don't quite understand; as a matter of fact, I have to ask him, because I don't know exactly what you are talking about now.

Q Well, I am asking you if that's the responsibility that you want, and assume that I am telling you the truth for the purposes of the question, assuming that you may be required to pay for notice to all of the members of this class that you have got described in this complaint; I want you to assume that you may be called upon to pay the costs of Court over there; and I want you to assume that the possibilities are if you lose this suit, that you may be required to pay attorneys' fees on behalf of yourself and all of these people that you claim to represent. And I am asking you do you want to do that?

A I want to pay mine.

Q But you don't want to pay anybody else's?

A No."

(Monk deposition pages 70 through 71, beginning at Line 20.)

"A There may be some, there may be several, I don't know; the case hasn't never been explained to me;

(*footnote continues*)

their clients were complaining. Plaintiffs, themselves, were most unenthusiastic about being class representa-

(*footnote continued*)

there may be several more that have problems that are similar that I don't know about."

(Monk deposition page 69, beginning at Line 11.)

GREEN:

"Q Do you know, Mr. Green, any one that, either you or your attorneys have obtained any written or oral statement from concerning this law suit?

A I don't know what my attorneys have done, sir."

(Green deposition pages 77 to 78, beginning at Line 24.)

"Q Are you aware that you sued the Union?

"A If it take suing the Union, well, then—the Union is not basically doing all the discrimination; it is Neal and his group, but the Union backs them up, like I am a member of the Union."

(Green deposition page 92, beginning at Line 20.)

"MR. STROMILE: We haven't concluded a figure, because we was not able to ascertain certain figures, but the form, the general form, that we would use would be that we would look to the day he made his application, and was turned down and we would determine the amount of pay that would have been received or the compensation that would have been received by the company that time up until now minus the amount that he makes now.

"MR. McKEE: What information do you need . . .

"MR. STROMILE: We want to know . . .

"MR. McKEE: You couldn't get?

"MR. STROMILE: We wanted to know the hourly rate, or as he said, the amount he would make per trip . . . we don't know . . . we would have to know about seniority and all of that, what trips possibly he would have made, being employed by Roadway.

"MR. McKEE: Don't you have access to the Union contract?

(*footnote continues*)

tives, and their responsibilities and liabilities as class representatives surely were not explained to them adequately, if at all.

In order to assess attorney fees and costs against plaintiffs' counsel under 28 U. S. C. § 1927,[3] a two-step process is necessary.

(*footnote continued*)

"MR. STROMILE: I didn't have ... the secretaries weren't in, and the other attorneys weren't in.

"Q Mr. Green, are you a member of a union, and don't you have access to the Union contract with Roadway?

A I don't know; I am a member of the Union.

Q Well, I assume that you knew what the Union scale was for that job."

(Green deposition pages 94-95, beginning at Line 16.)

(One year after filing this suit, this plaintiff and his counsel still had not decided on a final amount for which plaintiff was suing.)

"Q Mr. Green, you don't purport to represent any person who was employed by Roadway Express, do you ...

A (Shakes head negatively.)

Q ... In this class action? You are not claiming to be a person who is adequate to represent someone who works there; aren't you representing the people who applied, but are not ...

A Right, and denied for some discriminatory reason.

Q But you are not asserting yourself as a representative of the people like Monk, for example, who was not promoted; you are not undertaking to represent that class are you?

A No, that's over my head."

(Green deposition page 96, beginning at line 12.)

[3] "§ 1927. Counsel's liability for excessive costs

"Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required by the court to satisfy personally such excess costs."

First, counsel's unreasonable enlargement of plaintiffs' claims has been shown. Counsel never fully explained the true nature of the case to their clients, and clearly failed to represent plaintiffs in such a manner as to protect the rights of a considerably larger class.

"The implication of cases concerning adequacy of representation is that a party who wishes to prosecute an action on behalf of a class must protect the rights and interest of absent class members vigorously, tenaciously and effectively. He must meet the standard at every stage of the proceeding, including preparation of pleadings, pretrial motions, discovery, the trial itself, including the presentation of evidence, any post-trial briefing, and appeal.

* * *

"The standard of thoroughness spills over into the discovery stage. The liberal discovery procedure provided by the federal rules allows counsel for all parties to an action to be prepared for trial on all factual issues and to preserve and protect their clients' positions and evidence. At this stage, as at the early pretrial stage, class counsel owes a greater duty to absent clients than to those who are present. Counsel must undertake substantial discovery to preserve testimony in favor of the class, to rebut possible claims by the parties adverse to the class, and to impeach opposing witnesses. * * * "

Johnson, et al v. Shreveport Garment Co. and Delta Garment Corp., Civil Action 74-494 (W.D. La., 1976), ____ F.Supp. ____, at pages 11 and 12. (Stagg, J.—Involved inadequate presentation of the case. Messrs. Piper and Brown represented plaintiffs.)

Second, the jurisprudence concerning 28 U. S. C. § 1927, except in excusable circumstances, consistently requires that only such costs as normally would be allowed to the prevailing party be allowed. Thus, no punitive

damages should be allowed; rather, an equitable shifting of responsibility for unreasonable and vexatious costs from a party to his counsel is the result the statute envisions.[4]

[4] The following is a brief summary of cases citing 28 U.S.C. § 1927.

(1) Cases which have allowed costs to be assessed directly upon counsel:

Keifel v. Los Vegas Hacienda, Inc., 404 F. 2d 1163 97th Cir., (1968), cert. den. 395 U.S. 908, 89 S. Ct. 1750, rehearing den. 395 U.S. 987, 89 S. Ct. 2128.—Defendant's attorney used harrassing and obstructionist tactics in pre-trial proceedings to the extent that a new trial had to be granted in the case.

Weiss v. United States, 227 F. 2d 72 (2d Cir., 1955), cert. den. 350 U.S. 936, 76 S. Ct. 308, rehearing den. 350 U.S. 977, 76 S. Ct. 431.—Plaintiff's attorney was given a warning that fees might be assessed against him for time and time again bringing suits to collect the proceeds of life insurance policies with little variation of his original complaint which suit he lost.

Toledo Metal Wheel Co. v. Foyer Brothers & Co., 223 F. 350 (6th Cir., 1915).—Defendant's counsel excessively cross-examined witnesses, and improperly instructed another witness not to answer proper questions asked him in a deposition, and therefore costs were awarded against the attorney directly under the predecessor statute to 28 U.S.C. § 1927.

Harrell v. Joffrion, ____F. Supp.____, Civil Action 74-1072 (W. D. La., 1976), affirmed in *per curiam* by Fifth Circuit on December 29, 1976.—All costs, including those of empanelling the jury, were assessed directly upon plaintiff's counsel for vexatiously increasing costs by totally failing to prove any evidence of malpractice in a medical malpractice suit.

(2) Cases failing to allow costs to be assessed directly on counsel because their conduct was not vexatious or unreasonable enough to warrant such an award:

United States v. Ross, 535 F. 2d 346 (6th Cir., 1976).—Counsel did not vexatiously or intentionally increase costs.

Hanley v. Condrey, 467 F.2d 697 (2d Cir., 1972).—Costs were not assessed directly upon counsel though his appeal was

(*footnote continues*)

As shown, the jurisprudence is legion that 42 U. S. C. § 2000e-5(k)[5] gives the trial Judge extensive discretion to

(*footnote continued*)

patently frivolous since to do so might require notice and a hearing. (Here, we did have a hearing on October 5, 1976.)

1507 Corporation v. Henderson, 447 F. 2d 540 (7th Cir., 1971).—28 U.S.C. § 1927 does not allow the imposition of attorney fees against an opposing party who brought a *pro se* complaint.

West Virginia v. Charles Pfizer & Co., 440 F. 2d 1079 (2d Cir., 1971), cert. den. 404 U.S. 871, 92 S. Ct. 731.—There was not sufficient evidence of bad faith for costs to be assessed directly on counsel.

Miles v. Dickson, 387 F. 2d 716 (5th Cir., 1967).—The Court felt that plaintiff's attorney acted in good faith, so no attorney fees were awarded against him personally.

Brislin v. Killmanna Holding Corp., 85 F. 2d 667 (2d Cir., 1936).—The Court did not allow costs to be assessed against counsel personally, but reiterated that the trial Judge had great discretion to determine the extent to which an attorney before him had vexatiously and unreasonably increased costs.

Motion Picture Patents Co. v. Steiner, 201 F. 63 (2d Cir., 1912).—The record did not reveal evidence that counsel was being vexatious by prolonging examination of witnesses, therefore costs were not allowed against him personally. (This involved the predecessor statute to 28 U.S.C. § 1927.)

Chrysler Corp. v. Lakeshore Commercial Finance Corp., 389 F. Supp. 1216 (D.C. Wis., 1975).—Costs were not awarded directly against counsel because there was a lack of evidence that counsel prompted the suit rather than plaintiff. (here, there is direct evidence that counsel multiplied the proceedings by bringing a class action when plaintiffs did not know about or consent to it.)

[5] "(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person."

assess appropriate attorney fees in cases justifying such an award. Of course, any such award should not discourage plaintiffs and their attorneys from filing what they in good faith believe to be valid complaints either individually or on behalf of a class, but will not condone vexatious litigation or expect defendants, or their counsel, to oppose unreasonably enlarged complaints such as these.

In a recent Act approved October 19, 1976, Congress amended Title 42 to allow attorney fees to the prevailing party in a suit brought under 42 U. S. C. § 1981,[6] one of the statutes under which plaintiffs here have sued. It is abundantly clear from the above paragraph and from the very recent amendment to Title 42 that Congress has decided to allow attorney fees to be awarded more liberally in civil rights cases than in the past. The awards are not penalties, rather they are considered costs of effecting justice, and they are to be awarded judiciously.

An award of attorney fees is granted in many cases to assure plaintiffs a day in court. In this instance, we feel that an equally important interest is recognized, namely the discouragement of deliberate inaction by plaintiffs'

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[6] Public Law 94-559, 90 Stat. 2641:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as 'The Civil Rights Attorney's Fees Awards Act of 1976'.

"Sec. 2. That the Revised Statutes section 722 (42 U.S.C. 1988) is amended by adding the following: 'In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs'."

counsel which prejudices both plaintiffs, by jeopardizing their claims, and defendants, by multiplying their costs.

Piper admitted several times that his law firm had been "dilatory" in prosecuting plaintiffs' case, but counsels' fault went much deeper than mere tardiness; they failed to respond to our orders; first, an order to file a brief clarifying whether a class action pending in the Western District of Texas encompassed the purported class here (counsel failed to file this brief even after a second notice which included a warning of dismissal if the brief were not filed promptly); and second, an order to answer interrogatories. Finally, and most significantly, plaintiffs' counsel deliberately used three plaintiffs who did not understand the law suit filed on their behalf or agree to represent others, to broaden the case into a class action.

At the October 5, 1976, hearing, counsel for Piper, Brown, and Stromile (representing their malpractice insurer) detected several errors in defendants' attorneys' time logs. Counsel should confer and confect a judgment in accordance with the above ruling deleting erroneously or duplicatively billed hours, but otherwise allowing all attorney fees and costs sought. Counsel for defendants justifiably worked hundreds of hours to defend this law suit which Piper, Brown, and Stromile improvidently enlarged and inadequately prosecuted, the cost of which they must now pay.

Attached are the attorneys' affidavits (itemizations attached), otherwise undisputed, showing the number of hours they expended in preparing for what appeared to be a most serious law suit. Simply because the case never was tried does not justify depriving them of fees they justly have earned, all because of plaintiffs' counsels' "vexatious" behavior.

THUS DONE AND SIGNED, in Chambers, at Shreveport, Louisiana, this 6th day of January, 1977.

/S/BEN C. DAWKINS, JR.

Ben C. Dawkins, Jr.
United States Senior
District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION
NO. 75-0548-S

J. D. MONK, *Et Al*
Plaintiffs

vs.

ROADWAY EXPRESS, INC., *Et Al*
Defendants

Affidavit of M. Curtiss McKee Relative to Attorneys' Fees and Expenses Incurred by Roadway Express, Inc. With the Firm of Fuselier, Ott, McKee & Flowers

STATE OF MISSISSIPPI
COUNTY OF HINDS

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, while within my jurisdiction, M. Curtiss McKee, who, after being duly sworn by me, stated to me upon his oath as follows:

1. My name is M. Curtiss McKee. I am a member of the law firm of Fuselier, Ott, McKee & Flowers, 2100 Deposit Guaranty Plaza, Jackson, Mississippi. On or about August 5, 1975, my firm was retained to represent Roadway Express, Inc. in connection with the above captioned cause. My firm has been counsel for Roadway Express, Inc. in other matters prior to this one.

2. The practice of this firm is confined to labor relations law and related matters for the manage-

EXHIBIT A

ment only. I am familiar with the guidelines established by the Fifth Circuit Court of Appeals in *Johnson* v. *Georgia Highway Express*, 488 F.2d 714, 7 EPD ¶ 9079 (5th Cir., 1974), for awarding reasonable attorneys' fees to the prevailing party in a Title VII action. The relevant charges for our services and our expenses are set out in an Affidavit previously filed in this cause and detailed in a summary sheet attached hereto as Appendix 1 and by copies of our Statement attached as Appendix 2 showing thereon amounts of such statements attributable to the above captioned cause. The appendices show services rendered between August, 1975, and July, 1976, up to and including the date of this Affidavit. These charges include the legal services of senior counsel for 184¼ hours at an hourly rate of $50 per hour, and junior counsel for 55½ hours at a $40 per hour for a total payment by Roadway Express, Inc. for legal services and expenses during the above period of August 5, 1975 through July 8, 1976.

3. Since my firm was retained on or about August 5, 1975, we have recommended to the client and, Roadway Express, Inc., in due course, employed the services of Fiest, Schober & Howell (John L. Schober, Jr., Esquire) of Shreveport, Louisiana, to assist in the conduct of this litigation; the action being laid in the Shreveport Division of the Western District of Louisiana.

4. My law firm work, as stated previously, is exclusively in the practice of labor relations law and associated matters on behalf of management. Approximately 60 percent of this firm's practice involves administrative law practice before the Equal Employment Opportunity Commission or in the Federal Court System litigation under Title VII of the Civil Rights Act of 1964, as amended, or related laws such as 42 USC ¶ 1981 through ¶ 1983. The balance of the

practice is concerned with the National Labor Relations Act, National Labor Relations Board, OSHA and Wage and Hour matters, all of which are strictly confined to the employer-employee relationship. We feel that we have special expertise in these matters.

5. All of the charges for legal services and expenses shown in Appendices 1 and 2 attached were reasonable and necessary for the client's proper representation and in accordance with the customary charges made for the same services in Jackson, Mississippi, and in Shreveport, Louisiana. In addition, the attorneys' fees charged for services performed are the firm's standard and customary charges for such services at the time they were rendered. While the firm has charged more for similar services to other clients, the hourly rate charges for these services for other clients has not been less. The total amount of fees and expenses charged by this firm to Roadway Express, Inc. as a result of this litigation is $12,926.20.

/S/M. CURTISS MCKEE

M. Curtiss McKee

SWORN TO and subscribed before me this 8th day of July, 1976.

/S/MARTHA F. TRAVIS

Notary Public

My Commission Expires:

My Commission Expires June 12, 1977

Costs—Roadway v. Monk

August, 1975		
3¼ Hours at $50.00	$ 162.50	
L.D. Phone Charges	18.88	
		$ 181.38
September, 1975		
9 Hours at $50.00	450.00	
L.D. Phone Charges	8.54	
Xerox Copies	12.31	
		470.85
October, 1975		
3¾ Hours at $50.00	187.50	
L.D. Phone Charges	53.98	
Xerox Copies	5.00	
Postage	4.00	
		250.48
November, 1975		
3¾ Hours at $50.00	187.50	
L.D. Phone Charges	10.59	
Xerox Copies	12.48	
		210.57
December, 1975		
9 Hours at $50.00	450.00	
L.D. Phone Charges	46.17	
Xerox Copies	37.69	
Postage	1.60	
		535.46

APPENDIX 1

January, 1976		
17¾ Hours at $50.00	887.50	
L.D. Phone Charges	19.05	
Xerox Copies	10.00	
Postage	3.00	
Air Fare, Meals & Parking (Shreveport Trip)	66.72	
		986.27
February, 1976		
¾ Hour at $50.00	37.50	
L.D. Phone Charges	6.50	
		44.00
March, 1976		
2¾ Hours at $50.00	137.50	
12¾ Hours at $40.00	510.00	
Xerox Copies	12.00	
		659.50
April, 1976		
11¼ Hours at $50.00	562.50	
26 Hours at $40.00	1,040.000	
L.D. Phone Charges	62.62	
Xerox Copies	51.68	
Postage	6.00	
		1,722.80
May, 1976		
44½ Hours at $50.00	2,225.00	
3¾ Hours at $40.00	150.00	
L.D. Phone Charges	25.64	
Xerox Copies	24.84	
Plane Fare, Motel & Meals (Shreveport Trip)	154.54	
		2,580.02

June, 1976		
60½ Hours at $50.00	3,025.00	
13 Hours at $40.00	520.00	
L.D. Phone Charges	46.06	
Xerox Copies	84.00	
Ray J. Hanrahan Invoice	282.00	
Postage	12.12	
Air Fares	242.00	
Motel, Meals, Trips & Taxis	116.57	
		4,327.75
To July 8, 1976		
18 Hours at $50.00	900.00	
Xerox Copies	57.12	
		957.12
		$12,926.20

August 31, 1975

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

8/5	Phone conference with Mr. Kaminski re Title VII matter (Shreveport)	
8/7	Phone conference re information on Gardner case	
8/18	Memo from Mr. Moeller; Third Interrogatories (Gardner); letter from Mr. Kaminski; Complaint (Monk, et al)	(1¼)
8/19	Phone conference with Mr. Kaminski; study Complaint; phone conference with Mr. Schober (Monk, et al)	(¼)
8/21	Phone conference with Mr. Schober (Monk); letter from Mr. May; Supplemental Answers to Interrogatories (Gardner)	(¼)
8/25	Objections to Third Interrogatories (Gardner)	
8/26	Two phone conferences with Mr. Kaminski; phone conference with Mr. Schober (Monk); study file and prepare Objections to Third Interrogatories (Gardner)	(¾)

APPENDIX 2

8/27	Preparation of Supplemental Answers to Interrogatories; work on Objections to Third Interrogatories; letter to Clerk; letter to Clients; second letter to Clerk (Gardner); phone conference with Mr. Kaminski; phone conference with Mr. Schober; phone conference with Mr. Kaminski (Monk)	(¾)	
	Total of 11 Hours at $50.00	550.00	
	Total of ½ Hour at $40.00	20.00	
	L.D. Phone Charges	27.32	
	83 Xerox Copies at 12 cents	9.96	
	Luncheon Conference with Mr. Morgan in July	13.29	
	Postage	3.91	
			$624.48
	3½ Hrs @ 50.00	162.50	
	L.D. Phone	18.88	
			$181.38

September 30, 1975

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

9/2	Letter from Mr. Kaminski	(¼)

9/3	Review Answer; Letter from Mr. Schober; letter from Mr. Kaminski (Monk)	(2)	
9/8	Study proposed Answer; study Gunn's files; research; letter to Mr. Kaminski re Interrogatories, letter to Mr. Kaminski re Answer (Monk)	(4½)	
9/11	Letter to Mr. Chapin; Letter from court		
9/25	Phone conference with Mr. Kaminski; amending Answer	(1¾)	
9/26	Letter to Mr. Schober; Answer transmitted (Monk)	(½)	
9/30	Letter to Mr. Boyd; phone conference with Judge Nixon		
	Total of 12½ Hours at $50.00	625.00	
	L.D. Phone Charges	8.54	
	114 Xerox Copies at 12 cents	13.68	
			$647.22
	9 Hrs. @ 50.00	$450.00	
	L.D. Phone	8.54	
	Xerox Copies	12.31	
			$470.85

October 31, 1975

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

10/7	Conference with Messrs. Boyd and McRae	
10/8	Pre-trial hearing; conference with Messrs. Boyd and McRae; phone conference with Mr. Chapin; letter to Mr. Chapin; phone conference with Mr. Kaminski (Gardner); phone conference with Mr. Kaminski and phone conference with Mr. Schober (Monk)	(1)
10/9	Phone conference with Mr. Kaminski	(¼)
10/10	Phone conference with Mr. Kaminski	(¼)
10/13	Phone conference with Mr. Kaminski; phone conference with Mr. Boyd; phone conference with Mr. Kaminski; phone conference with Mr. Boyd; Order to Dismiss With Prejudice; Release; letter to Mr. Chapin (Gardner); phone conference with Mr. Kaminski; study Interrogatories; phone conference with Mr. Schober (Monk)	(2¼)
10/14	Hearing at Judge Nixon's office; phone conference with Mr. Kaminski (Gardner)	
10/15	Order on Interrogatories; letter from Client	
10/20	Letter from Company (Gardner)	

10/24	Phone conference with Mr. Kaminski; phone conference with Mr. Chapin	
10/30	Letter to Judge Nixon; letter to Mr. Chapin; Release to Mr. Chapin	
	Total of 13½ Hours at $50.00	675.00
	L.D. Phone Charges	59.98
	177 Xerox Copies at 12 cents	21.24
	Postage	5.54
	Lynn Dudley (Inv. Att.)	42.75
		$804.51
	3¾ Hrs. at $50.00	187.50
	L.D. Phone	53.98
	Xerox Copies	5.00
	Postage	4.00
		$250.48

November 30, 1975

In Account With:

BUCKINGHAM, DOOLITTLE AND BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

11/3	Letter to Mr. Schober and Mr. Kaminski (Monk)	(¼)
11/6	Letter from Mr. Gunn; letter to Mr. Gunn (Gardner)	

11/10	Letter from Mr. Gunn; study materials (Monk); phone conference with Mr. Kaminski; phone conference with Mr. Schober	(¾)
11/11	Prepare Motion, Notice of Motion, Memorandum, Affidavit, and Order (Monk)	(2½)
11/19	Letter from Court; letter to Mr. Kaminski; letter from Mr. Gunn	
11/25	Phone conference with Mr. Kaminski, Mr. Gunn and Mr. May	(¼)
11/26	Letter to Mr. Kaminski; Union's Answer	
	Total of 4¾ Hours at $50.00	237.50
	L.D. Phone Charges	10.59
	104 Xerox Copies at 12 cents	12.48
		$260.57
	3¾ Hrs. at $50.00	187.50
	L.D. Phone	10.59
	Xerox Copies	12.48
		$210.57

December 31, 1975

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

12/3	Phone conference with Mr. Gunn (Griffin)	
12/4	Phone conference with Mr. May	
12/5	Received letter and file from Mr. Gunn (Griffin)	
12/12	Prepare Motion and Order; letter to Mr. Cupit (Griffin)	
12/16	Letter from Mr. May (Monk)	(¼)
12/22	Letter from court (Calendar); phone conference with Mr. Schober; letter from Mr. Gunn; letter to Mr. Gunn (Monk); phone conference with Clerk; phone conference with Judge Cox; letter from Mr. Cupit (Griffin)	(2)
12/23	Received additions to Calendar from Court; copy to Clients (Monk)	(¼)
12/24	Answers to Interrogatories; Letter to Mr. May; copy to Mr. Kaminski and Mr. Gunn (Monk)	(5)

12/29	Phone conference with Mr. Schober (Monk)	(½)	
12/30	Phone conference with Mr. Kaminski	(½)	
12/31	Received Letter and enclosure from Mr. May; phone conference with Mr. Schober (Monk)	(½)	
	Total of 12 Hours at $50.00	600.00	
	L.D. Phone Charges	46.17	
	349 Xerox Copies at 12 cents	41.88	
	Postage	1.60	
			$689.65
	9 Hrs. @ 50.00	$450.00	
	L.D. Phone	46.17	
	Xerox Copies	37.69	
	Postage	1.60	
			$535.46

January 31, 1976

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

1/2	Interrogatories, Notice of Deposition, Motion to Continue; phone conference with Mr. Schober; received letter and signed pages of Answers from Mr. May	(4¾)

	(Monk); study Interrogatories and study file re Answer and Motions and Responses generally (Griffin)	
1/3	Phone conference with Mr. Chapin; phone conference with Mr. Wood	
1/4	Review file	(1¾)
1/5	Travel to Shreveport; conference with Mr. Schober, Mr. Cordell, Mr. Piper and Mr. Brown; phone conference with Mr. Kaminski; phone conference with office	(10)
1/7	Phone conference with Mr. Cordell; phone conference with Mr. Kaminski; phone conference with Mr. Gunn (Monk); phone conference with Mr. Gunn (Griffin); letter to Mr. Gunn with copy of CCH report; study file (Monk)	(¾)
1/16	Conference with Ms. Devine re Interrogatories to Plaintiff	(¼)
1/19	Received letter and attachments from Mr. Gunn	(¼)
1/21	Letter to Mr. Haycraft of EEOC with copies to Client; conference between Mr. McKee and Mr. Ott; study file (Complaint, Plaintiff's Interrogatories and Defendant's Interrogatories)	

1/29 ..... Letter from Mr. Cupit; Amendment of Described Class; letter to Mr. Gunn (Griffin)

Total of 50¾ Hours at $50.00	1,237.50	
L.D. Phone Charges	19.05	
100 Xerox Copies at 12 cents	12.00	
Postage	3.50	
Air Fare	55.05	
Meal and Parking	11.67	
		$1,338.77
17¾ Hrs. @ 50.00	$887.50	
L.D. Phone	19.05	
Xerox Copies	10.00	
Postage	3.00	
Air Fare, Meals & Pkg.	66.72	
		$986.27

February 29, 1976

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

2/5 ..... Letter from Mr. Cupit, copy to Client; letter to Client (Griffin); phone conference with Mr. Schober re depositions (Monk); study file; draft Answer (Griffin) (¾)

2/6 ..... Research; preparation of Answer; phone conference with Mr. Gunn; re-

search relation back of expansionist amendment (Griffin)

2/9 ..... Phone conference with Mr. Kaminski; phone conference with Mr. May; letter from EEOC and file; letter to Mr. Gunn re EEOC file; research relation back of amendments—variance from charges; conference between Mr. Ott and Mr. McKee

2/10 ..... Letter from Mr. Cupit; two phone conferences with Mr. May; letter to Mr. Gunn; prepare draft of Answer and forward to Mr. Gunn; copy to Mr. Kaminski; research timeliness and relation back of amendments; conference between Mr. McKee and Mr. Ott

2/11 ..... Phone conference with Mr. Gunn; phone conference with Mr. May

2/12 ..... Phone conference with Mr. May

2/17 ..... Letter and material received from Mr. Gunn; research 180-day deferral to agency action as relates to third charge

2/18 ..... Letter to Mr. Schober

2/19 ..... Answer to Interrogatories; phone conference with Mr. May; research 180-day limitation—for Motion purposes; letter to Mr. Gunn with addition to catalog; letter to Mr. May enclosing Interrogatories

2/20	Received copy of Mr. Cupit's letter to Clerk; Motion for Sanctions for Failure to Answer Interrogatories and Notice; letter to Mr. Cupit; copy of Clients; phone conference with Mr. May; research 180-day requirement		
2/24	Letter from Mr. Cupit; letter to Mr. Cupit; copy to Clients		
2/26	Received Answers to Interrogatories from Mr. May; letter to Clerk filing Answers; copy to Mr. Cupit and Clients		
2/27	Phone conference with Mr. Kaminski; phone conference with Mr. Gunn; letter to Clerk; Notice of Motion; Brief on Motion		
Total of 28¾ Hours at $50.00		1,437.50	
L.D. Phone Charges		40.97	
219 Xerox Copies at 12 cents		26.28	
Postage		2.73	
EEOC Copies		1.00	
			$1,508.48
¾ Hour @ $50.00		$37.50	
L.D. Phone		6.50	
			$44.00

March 31, 1976

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

3/1	Phone conference with Mr. Kaminski; Brief on Motion to Dismiss; Interrogatories; phone conference with Mr. Cupit; letter to Clerk; copy to Clients	
3/2	Prepare Interrogatories to Plaintiff; letter to Mr. Gunn; research and prepare Brief on Motion to Dismiss (Griffin)	
3/3	Prepare affidavit of Mr. Gunn; work on Brief; letter to Mr. Gunn	
3/4	Letter from Mr. Gunn with signed copy of Presley statement; Copy of letter from Mr. Cupit to Clerk; copy of Motion to Compel Discovery and Notice; letter to Clerk filing Interrogatories; letter to Mr. Gunn enclosing copies of Brief and Interrogatories	
3/5	Letter from Mr. Cupit; letter to Mr. Gunn; letter from Mr. Gunn (Griffin); letter to Mr. Schober (Monk)	(½)
3/16	Letter to Mr. Cupit; phone conference with Ms. Crews	
3/17	Phone conference with Mr. Gunn; study affidavit (Griffin); phone conference with Mr. Schober (Monk)	(¼)

3/18	Letter from Mr. Gunn enclosing signed affidavit; letter from Mr. Gunn enclosing catalog	
3/22	Phone conference with Mr. Gunn; letter from Mr. Kaminski (Griffin); phone conference with Mr. Schober re depositions (Monk)	(½)
3/23	Letter to Mr. Gunn; letter to Mr. Kaminski; letter to Judge Cox; Brief finalized; letter to Clerk; affidavit; letter from Mr. Cupit (Griffin)	
3/24	Research Affirmative Defenses and Rule 12 Motion re Monk suit; research and preparation re Motion to Compel Answers to Interrogatories and Sanctions	(2¼)
3/25	Research re Rule 12 and class action aspects of Monk suit	(1)
3/26	Motion to Compel and Notice; letter to Mr. Schober; conference between Mr. Moeller and Mr. McKee	(1½)
3/29	Conference between Mr. Moeller and Mr. McKee re Motion and Order to Answer Interrogatories, Rule 12 Motion	(½)
3/30	Research re class action issues in Monk suit	(3)
3/31	Research re Motion to Dismiss or for Summary Judgment in Monk suit	(6)

Total of 21 Hours at $50.00	1,050.00
Total of 12¾ Hours at $40.00	510.00
481 Xerox Copies at 12 cents	57.72
	$1,617.72
2¾ Hrs at $50.00	137.50
12¾ Hrs at $40.00	510.00
Xerox Copies	12.00
	$659.50

April 30, 1976

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

4/1	Received Motion for Preliminary Injunction, Notice of Motion, Affidavit of Nanci B. Griffin, and Affidavit of Charles A. Haycraft; copy to Clients; prepare for Motions; research and preparation of Memorandum	(5)
4/2	Conference with Mr. Cupit; served with Affidavit; U. S. District Court Hearing on Motion to Dismiss/ Summary Judgment—Plaintiff's Motion to Compel and for Preliminary Injunction; letter to	(4)(¼)

	Mr. Gunn; letter from Mr. Cupit (Griffin); letter to Mr. Gunn (Monk); preparation of Brief in Monk suit	
4/3	Preparation of Brief in Monk suit	(2¾)
4/5	Preparation of deposition questions for Plaintiffs Monk, Green and McPherson	(6¾)
4/7	Preparation of deposition questions for Monk, Green and McPherson and Memorandum in Support of Motion to Dismiss or Summary Judgment; phone conference with Mr. Cupit; phone conference with Mr. Gunn; letter to Mr. Gunn (Griffin); phone conference with Mr. Gunn (Monk); review Brief; phone conference with Mr. Schober; review deposition questions	(2¼)(2¾)
4/8	Conference between Mr. McKee and Mr. Moeller re Memorandum of Authorities in Support of Motion to Dismiss; preparation of Affidavit of Mr. Gunn; research and preparation of Motion for Summary Judgment and Notice of Motion; Notice of Depositions; phone conference with Mr. Kaminski; second phone conference with Mr. Kaminski; phone conference with Mr. Schober (Monk)	(4)(2)

4/9	Letter from Mr. Cupit, copy to Mr. Gunn and Mr. Kaminski (Griffin); phone conference with Mr. Kaminski; letter to Mr. Kaminski; letter from Mr. Schober; letter from Judge Dawkins; study San Antonio matter (Monk)	(1½)
4/12	Preparation of Monk Memorandum in Support of Motion to Dismiss; review Affidavit, Notice of Motion; phone conference with Mr. Kaminski; letter to Mr. Gunn (Monk)	(¾)(¾)
4/14	Study file; received copy of letter from Mr. Kaminski to Mr. Presley (Griffin); review Brief and Motions; letter to Mr. Gunn enclosing Affidavit; letter to Baab and Cloutman enclosing copies of all pleadings; received copies of Motion, Notice, Order and Notice of taking Depositions from Mr. Schober (Monk)	(2)
4/15	Conference between Mr. McKee, Mr. Ott and Mr. Moeller re Monk Brief; letter from Mr. Gunn; received information requested from Shreveport office; letter to Mr. Schober (Monk)	(½)(¾)
4/28	Received copy of filed documents from Mr. Schober; letter to Mr. Schober requesting hearing date; phone conference with Ms. Brown (Monk)	(¼)

Total of 22½ Hours at $50.00	1,125.00	
Total of 40¼ Hours at $40.00	1,610.00	
L.D. Phone Charges	65.99	
700 Xerox Copies at 12 cents	84.00	
Postage	9.54	
		$2,894.53
11¼ Hrs. @ 50.00	$ 562.50	
26 Hrs. @ 40.00	1,040.00	
L.D. Phone	62.62	
Xerox Copies	51.68	
Postage	6.00	
		$1,722.80

May 31, 1976

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

5/4	Two phone conferences with Mr. Schober	(½)
5/5	Received letter and attachments from Ms. Neal of Shreveport Terminal; letter from Mr. Cordill; travel to Shreveport; prepare for depositions	(8¼)

5/6	Deposition of Green and McPherson; prepare for Monk deposition	(10)
5/7	Deposition of Monk; return to Jackson	(10)
5/10	Phone conference with Mr. Kaminski; study file; conference between Mr. McKee and Mr. Moeller; phone conference with Mr. Schober (Monk)	(½)(6¼)
5/11	Conference between Mr. McKee and Mr. Moeller re remployment register; preparation of Motion to Dismiss, Notice of Motion and two Affidavits in Support of Motion to Dismiss; conference between Mr. Moeller and Mr. McKee re Affidavits; research and preparation of Memorandum in Support of Motion to Dismiss Complaint of McPherson (Monk); phone conference with Mr. Kaminski; draft of letter to Dawkins; letter to Mr. Schober; prepare affidavit of Mr. Cordill (Monk)	(3¼)(8)
5/12	Phone conference with Mr. Cordill (Monk); phone conference with Mr. Kaminski; letter to Mr. Cupit (Griffin)	(½)
5/13	Phone conference with Mr. Cordill (Monk)	(½)
5/14	Letter from Mr. Gunn; letter from Mr. Cupit; letter to Mr. Cupit;	(½)

	prepare Notice of Deposition, Presley; letter to Clerk enclosing Notice (Griffin); phone conference with Mr. Schober (Monk)		
5/24	Preparation of Order re Motion to Dismiss (Griffin)		
5/28	Draft Order; letter from Court; phone conference with Mr. Cupit; letter to Mr. Gunn (Griffin); delivered order to Mr. Cupit		
5/31	Conference with Mr. Cupit (Griffin)		
	Total of 47½ Hours at $50.00	2,375.00	
	Total of 5 Hours at $40.00 ..	200.00	
	L.D. Phone Charges	25.64	
	207 Xerox Copies at 12 cents	24.84	
	Air Fare	75.00	
	Motel, Meals, Taxis, and Parking	79.54	
			$2,780.02
	44½ Hrs. @ 50.00	2,225.00	
	3¾ Hrs. @ 40.00	150.00	
	L.D. Phone	25.64	
	Xerox Copies	24.84	
	Plane Fare, Motel & Meals	154.54	
			$2,580.02

June 30, 1976

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway Express, Inc.

6/1	Hearing, Judge Cox signs Order; letter from Mr. Cupit; letter to Clerk (Griffin); phone conference with Mr. Schober (Monk)	(¼)
6/2	Phone conference with Ms. Brown re phone conference with Mr. Schober (Monk)	(¼)
6/3	Received Order from Clerk; copy to Clients (Griffin)	
6/5	Phone conference with Ms. Brown re conversation with Mr. Gunn (Griffin)	
6/7	Phone conference with Ms. Warwick re letter received from Mr. Cordill enclosing Motion filed (Monk)	(¼)
6/10	Letter from Mr. Cordill; study Brief of Plaintiffs (Monk); letter from Mr. Gunn; letter to Mr. Cupit (Griffin)	(1)
6/11	Phone conference with Mr. Gunn and Mr. Kaminski re Monk and Griffin; letter to Mr. Cupit (Griffin); phone	(2¾) (3½)

	conference with Mr. Schober (Monk); research re Plaintiff's Response to Motion for Summary Judgment and Memorandum; conference between Mr. McKee and Mr. Moeller re same and alternatives; study Brief of Plaintiffs	
6/14	Letter from Mr. Gunn	(¼)
6/16	Letter from Mr. Schober; letter to Mr. Gunn (Monk)	(½)
6/17	Phone conference with Mr. Schober; phone conference with Mr. Gunn and Mr. Kaminski re Show Cause Order (Monk)	(1)
6/18	Letter from Court and letter to Mr. Gunn re Show Cause Order (Monk)	(½)
6/19	Study depositions of McPherson, Green and Monk; outline same	(3)
6/23	Study files; prepare for deposition (Monk)	(4)
6/24	Prepare for deposition; travel to Akron; conference with Mr. Gunn and Mr. Kaminski (Monk); review depositions of Monk and Green; research for Brief	(2)(10)
6/25	Research and preparation of Brief; conference with Mr. Gunn, Mr. Kaminski and Mr. Presley; deposition of Mr. Presley; return to Jackson (Monk)	(7½)(12)

6/26	Conference with Mr. Cupit (Griffin); study Brief (Monk)	(½)	
6/28	Study Brief; conference between Mr. McKee and Mr. Moeller re Brief in Support of Position and re oral argument at hearing; phone conference with Mr. Schober; phone conference with Mr. Gunn (Monk)	(¾)(7)	
6/29	Conference with Ms. Travis; Brief revisions; travel to Shreveport; conference with Mr. Schober and Mr. Cordill; prepare affidavit (Monk)	(6½)	
6/30	Conference with Mr. Schober and Mr. Cordill; Show Cause Hearing; affidavit supplementing Attorneys fees and expenses; phone conference with Mr. Kaminski; conference with Judge Dawkins (Monk)	(10)	
Total of 63½ Hours at $50.00		3,175.00	
Total of 13 Hours at $40.00		520.00	
I.D. Phone Charges		46.06	
700 Xerox Copies at 12 cents		84.00	
Postage		12.12	
Ray J. Hanrahan (Court Reporter-Inv. Att.)		282.00	
Air Fare		242.00	
Motels, Meals, Tips and Taxis		116.57	
			$4,477.75

60½ Hrs @ 50.00	3,025.00	
13 Hrs @ 40.00	520.00	
L.D. Phone	46.06	
700 Xerox Copies	84.00	
Postage	12.12	
Ray J. Hanrahan Inv.	282.00	
Air Fare	242.00	
Motels, Meals, Tips & Taxis	116.57	
		$4,327.75

July 8, 1976

In Account With:

BUCKINGHAM, DOOLITTLE & BURROUGHS
1 Cascade Plaza
Akron, Ohio 44308

Re: Roadway, Express, Inc.

Services Through July 8, 1976

7/1	Return from Shreveport (Monk); phone conference with Mr. Cupit (Griffin); prepare Affidavit; letter to Mr. Gunn; phone conference with Mr. Gunn (Monk)	(4½)
7/2	Prepare Affidavits and limitations for Attorneys' fees; work on Brief on Attorneys' fees (Monk); phone conference with Mr. Gunn; prepare Notice; phone conference with Court Reporter (Griffin)	(6)

7/6	Prepare Brief on Attorneys' fees (Monk); letter from Court Reporter; letter from Mr. Cupit; study files; letter to Mr. Cupit; letter to Mr. Gunn (Griffin)	(3)	
7/7	Phone conference with Mr. Schober; work on Brief, Affidavits and Exhibits (Monk)	(1½)	
7/8	Preparation of Brief and Affidavits in Support of Award for Attorneys' fees (Monk)	(3)	
	Total of 23¼ Hours at $50.00	1,162.50	
	491 Xerox Copies at 12 cents	58.92	
			$1,221.42
	18 hrs @ $50.00	900.00	
	476 Xerox Copies	57.12	
			$957.12

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION
NO. 75-0548-S

J. D. MONK, *Et Al*
Plaintiffs

vs.

ROADWAY EXPRESS, INC., *Et Al*
Defendants

AFFIDAVIT

Now comes Edward C. Kaminski, the undersigned, being first duly sworn, states that:

He is a partner in the law firm of Buckingham, Doolittle & Burroughs which is general counsel for Roadway Express, Inc. He is a labor attorney and services Roadway Express with regard to corporate labor and civil rights matters. He represented Roadway in Akron, Ohio in connection with the captioned lawsuit. In this connection he kept track of his time expended on this case on diary sheets which describe the service performed and the amount of time expended, which diary sheets are attached hereto. The total amount of time expended up to May 12, 1976 was 25.2 hours. His usual and customary hourly rate for such services is $60 per hour and on that basis the value of the services performed, and for which Roadway has been charged, up to May 12, 1976 is $1,512.00 in connection with this case.

/S/EDWARD C. KAMINSKI

(Subscription Omitted In Printing)

EXHIBIT B

BUCKINGHAM, DOOLITTLE & BURROUGHS
TIME CHARGE TICKET

CLIENT Roadway Express DATE 8-8-75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
letter forwarding com- CONFERENCE		01		
plaint to attorneys in TELEPHONE		02		
Shreveport and Jack- CORRESPONDENCE		03		
son RESEARCH		04		
FILE REVIEW		05		
				3
ATTORNEY'S INITIALS & NO.	INITIALS ECK	NUMBER		3
	TOTAL HOURS			

FORM NO. 274

604

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE T ET

CLIENT Roadway DATE 8-19-75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
conference with — CONFERENCE		01		
Mr. McKee re: — TELEPHONE		02		
status of answer — CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
				4
ATTORNEY'S INITIALS & NO. — INITIALS ECK — NUMBER				4
TOTAL HOURS				

FORM NO. 2.74

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE T ET

CLIENT Roadway Express DATE 8/26/75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Studying default notice, con-				
ference with Teamsters re				
same, and several conferences				
with Mr. McKee re continuance;				
studying pleading and civil				
rules re class actions and				
Title VII history re same in				
preparation for filing answer.				
ATTORNEY'S INITIALS & NO. — INITIALS ECK — NUMBER				
TOTAL HOURS			2	0

FORM NO. 2.74

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE T ET

CLIENT Roadway DATE 8/27/75

NAME Monk vs.

CASE NO. B-51-356		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Conferences with Messrs. Gunn,				
McKee and Babb re status of				
default; study complaint and				
preparing answer; lengthy cover				
letter to Mr. McKee explaining				
the answer and theory of				
defenses.				
ATTORNEY'S INITIALS & NO.	INITIALS ECK	NUMBER		
TOTAL HOURS			3	0

FORM NO. 2.74

606

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE T ET

CLIENT Roadway DATE 8/28/75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Meeting with Mr. Gunn				
re facts of three com-				
plaintants charges and editing				
and forwarding answer to				
McKee.				
ATTORNEY'S INITIALS & NO.	INITIALS ECK	NUMBER		
TOTAL HOURS			2	0

FORM NO. 2.74

607

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE TICKET

CLIENT Roadway DATE 9/2/75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Conference with Mr. Gunn re				
materials to be sent to Mr.				
McKee.				
ATTORNEY'S INITIALS & NO.	INITIALS ECK	NUMBER		
TOTAL HOURS				.3

FORM NO. 2.74

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE TICKET

CLIENT Roadway DATE 9/3/75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Conference with Mr. Gunn				
re materials to McKee.				
ATTORNEY'S INITIALS & NO.	INITIALS ECK	NUMBER		
TOTAL HOURS				.3

FORM NO. 2.74

BUCKINGHAM, DOOLITTLE & BURROUGHS
TIME CHARGE T ET

CLIENT Roadway DATE 9/25/75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Conference with Mr. McKee re answer he proposes to file.				
ATTORNEY'S INITIALS & NO. INITIALS ECK NUMBER				
TOTAL HOURS				.5

FORM NO. 2.74

610

BUCKINGHAM, DOOLITTLE & BURROUGHS
TIME CHARGE T ET

CLIENT Roadway Express DATE 9/6/75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Meeting with Mr. Gunn and conference with Mr. Manitzas re notice to class and effective Cleveland decree.				
ATTORNEY'S INITIALS & NO. INITIALS ECK NUMBER				
TOTAL HOURS				3.0

FORM NO. 2.74

611

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE TICKET

CLIENT Roadway DATE 10/8/75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Conf. with Mr. McKee re interrogatories				
and overall strategy in conflict with				
Southern Conf. case/				
ATTORNEY'S INITIALS & NO.	INITIALS . ECK	NUMBER		
TOTAL HOURS			.5	

FORM NO. 274

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE TICKET

CLIENT Roadway Express DATE 8-7-75

NAME Monk et al vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
conference with Mr. CONFERENCE		01		
Schober re: representa- TELEPHONE		02		
tion of Roadway in CORRESPONDENCE		03		
Shreveport RESEARCH		04		
FILE REVIEW		05		
				3
ATTORNEY'S INITIALS & NO.	INITIALS ECK	NUMBER		3
TOTAL HOURS				

FORM NO. 274

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE TICKET

CLIENT Roadway DATE 8-6-75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
conferences with Mr. — CONFERENCE		01		
McKee abd Mr. Gunn — TELEPHONE		02		
re: representation of — CORRESPONDENCE		03		
Roadway — RESEARCH		04		
— FILE REVIEW		05		
				7
ATTORNEY'S INITIALS & NO.	INITIALS: ECK	NUMBER:		7
	TOTAL HOURS			

FORM NO. 274

614

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE TICKET

CLIENT Roadway DATE 8-5-75

NAME Monk et al vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
conferences with Joe — CONFERENCE		01		
Varbel and McKee's — TELEPHONE		02		
office re: identity — CORRESPONDENCE		03		
of atty in Shreveport — RESEARCH		04		
who could represent — FILE REVIEW		05		
Roadway				
			1	0
ATTORNEY'S INITIALS & NO.	INITIALS: ECK	NUMBER:	1	0
	TOTAL HOURS			

FORM NO. 274

615

BUCKINGHAM, DOOLITTLE & BURROUGHS
TIME CHARGE SHEET

CLIENT Roadway Express DATE 8-4-75

NAME Monk et al vs. (Civil Rts)

CASE NO. B-51-346 SUB. NO.

DIARY DETAIL	✓	WORK CODE	HOURS
CONFERENCE		01	
conferences with TELEPHONE		02	
Messrs Collin and CORRESPONDENCE		03	
Tittle re: attornye RESEARCH		04	
in Shreveport to FILE REVIEW		05	
represent Roadway			
			6

ATTORNEY'S INITIALS & NO.	INITIALS	NUMBER	
	ECK		6
TOTAL HOURS			

FORM NO. 2.74

616

BUCKINGHAM, DOOLITTLE & BURROUGHS
TIME CHARGE SHEET

CLIENT Roadway DATE 10/13/75

NAME Monk vs.

CASE NO. B-51-346 SUB. NO.

DIARY DETAIL	✓	WORK CODE	HOURS
CONFERENCE		01	
TELEPHONE		02	
CORRESPONDENCE		03	
RESEARCH		04	
FILE REVIEW		05	
Studying file and interrogatories;			
conference with Mr. Key re strategy			
and interrogatories.			

ATTORNEY'S INITIALS & NO.	INITIALS	NUMBER	
	ECK		
TOTAL HOURS			1.5

FORM NO. 2.74

617

BUCKINGHAM, DOOLITTLE & BURROUGHS
TIME CHARGE T ET

CLIENT Roadway DATE 10/18/75

NAME Monk vs.

CASE NO. B-51-346		SUB. NO.		
DIARY DETAIL	✓	WORK CODE	HOURS	
CONFERENCE		01		
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
Forwarding interrogatories to May with				
questions.				
ATTORNEY'S INITIALS & NO.	INITIALS: ECK	NUMBER:		
TOTAL HOURS				.3

FORM NO. 2.74

618

BUCKINGHAM, DOOLITTLE & BURROUGHS
TIME CHARGE ' ET

CLIENT Roadway -- Monk v. DATE 11/10/75

NAME

CASE NO. B-51		SUB. NO. 346		
DIARY DETAIL	✓	WORK CODE	HOURS	
Conference with Mr. McKee re				
CONFERENCE		01		
interrogatories				.5
TELEPHONE		02		
CORRESPONDENCE		03		
RESEARCH		04		
FILE REVIEW		05		
ATTORNEY'S INITIALS & NO.	INITIALS: ECK	NUMBER:		
TOTAL HOURS				.5

FORM NO. 2.74

619

BUCKINGHAM, DOOLITTLE & BURROUGHS

TIME CHARGE TICKET

CLIENT Roadway Monk vs. DATE 11-28-75

NAME

CASE NO. B-51		SUB. NO. 346		
DIARY DETAIL	✓	WORK CODE	HOURS	
Studying interrogatories with CONFERENCE		01		
respect to decreasing work TELEPHONE		02		
upon Roadway and answering CORRESPONDENCE		03	2	0
RESEARCH		04		
FILE REVIEW		05		
ATTORNEY'S INITIALS & NO.	INITIALS ECK	NUMBER	2	0
TOTAL HOURS				

FORM NO. 2.74

620

B. D. B. TIME TICKET

DATE 1-7-76

CLIENT: Roadway Express Monk vs.	CLIENT NO.	
MATTER (CASE) B-51	SUB. NO. * 346	
Meeting with Mr. Gunn re interrogatories and other developments in Monk case in Shreveport	1	0
ATTORNEY'S INITIALS ECK	ATTORNEY'S NO.	
TOTAL HOURS	1	0

FORM NO. 2.74 NOTE:* USE THIS SUB CODE SPACE ONLY IF THE CLIENT IS TO BE BILLED BY THIS SUB NUMBER

621

B. D. B. TIME TICKET

DATE 1-5-76

CLIENT: Roadway
Monk v.

CLIENT NO.

MATTER (CASE) B-51

SUB. NO. * 346

~~Conference with Mr. McKee re~~		
activities in case and settlement		
discussion with Plaintiffs'		
attorney		5

ATTORNEY'S INITIALS: ECK

ATTORNEY'S NO.:

TOTAL HOURS: 5

FORM NO. 2.74 NOTE:* USE THIS SUB CODE SPACE ONLY IF THE CLIENT IS TO BE BILLED BY THIS SUB NUMBER

622

B. D. B. TIME TICKET

DATE ~~1-8-76~~

CLIENT: ~~Roadway Express Co.~~
~~EX~~ Monk vs.

CLIENT NO.

MATTER (CASE) ~~B-51~~

SUB. NO. * 346

~~Conferences with Messrs McKee &~~		
~~Gunn re court's insistance on~~		
~~January trail date.~~	1	0

ATTORNEY'S INITIALS: ECK

ATTORNEY'S NO.:

TOTAL HOURS: 1 0

FORM NO. 2.74 NOTE:* USE THIS SUB CODE SPACE ONLY IF THE CLIENT IS TO BE BILLED BY THIS SUB NUMBER

623

B. D. B. TIME TICKET

DATE 1-9-76

CLIENT: Roadway Express Inc.	CLIENT NO.
Monk vs.	
MATTER (CASE) B-51	SUB. NO. * 346

Conferences with attorney Schobert		
and with Mr. Gunn re crisis		
involving Curtis McKee's illness	1	5
ATTORNEY'S INITIALS: ECK	ATTORNEY'S NO.	
TOTAL HOURS	1	5

FORM NO. 2.74 NOTE:* USE THIS SUB CODE SPACE ONLY IF THE CLIENT IS TO BE BILLED BY THIS SUB NUMBER

624

B. D. B. TIME TICKET

DATE 4-12-76

CLIENT: ~~Roadway Express, Inc.~~	CLIENT NO. B-51
MATTER (CASE) Monk vs.	SUB. NO. * -346

Studying correspondence in Monk		
file and conference with Mr.		
Mc Kee re Monk's letter regarding		
Southern Conference Class	1	0
ATTORNEY'S INITIALS: ECK	ATTORNEY'S NO.	
TOTAL HOURS	1	0

FORM NO. 2.74 NOTE:* USE THIS SUB CODE SPACE ONLY IF THE CLIENT IS TO BE BILLED BY THIS SUB NUMBER

625

B. D. B. TIME TICKET

DATE 4-28-76

CLIENT: Roadway Express, Inc.	CLIENT NO. B-51
MATTER (CASE) Monk vs.	SUB. NO. -346

Reviewing Monk file with regard		
to response to make to Judge		
regarding class action in Southern		
Conference		5
ATTORNEY'S INITIALS: ECK	ATTORNEY'S NO.	
TOTAL HOURS		5

FORM NO. 2.74 NOTE: USE THIS SUB CODE SPACE ONLY IF THE CLIENT IS TO BE BILLED BY THIS SUB NUMBER

626

B. D. B. DAILY TIME TICKET

DATE 5-12-76

CLIENT: Roadway Express, Inc.	CLIENT NO. B-51
MATTER (CASE) Monk vs.	SUB. NO. -346

Conference with Mr. McKee re		
efforts to pin plaintiffs down and		
to get their counsel to withdraw		
from case.		5
ATTORNEY'S INITIALS: ECK	ATTORNEY'S NO.	
TOTAL HOURS		5

FORM NO. 2.74 NOTE: USE THIS SUB CODE SPACE ONLY IF THE CLIENT IS TO BE BILLED BY THIS SUB NUMBER

627

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

(Caption Omitted in Printing)

Affidavit

Now comes Daniel M. Gunn, the undersigned, being first duly sworn, states that he is Vice President of Employee and Labor Relations for Roadway Express, Inc., and states further as follows:

While specific records were not maintained on a day to day basis, it is my estimate that time and materials necessary to respond to this litigation were as follows:

1) As corporate officer responsible for this area of activity, I personally expended a minimum of two (2) weeks (80) hours in coordinating the Company's defense. Involved time included consultation with both general counsel and local counsel in the development of pleadings and other legal matters, as well as supervision of the research and preparation of responses to plaintiffs' interrogatories.

2) Field and general office personnel were involved in the research and preparation of responses to the interrogatories to the extent that a minimum of 40 hours supervisory and clerical time was necessary to accomplish same.

3) Additional expense was incurred in the reproduction of copies of Company records, as well as pro-

EXHIBIT C

duction as necessary of multiple copies of pleadings and responses to interrogatories. Additional expense was incurred by reason of necessary telephone conversations between counsel and Company personnel.

4) It is estimated that a minimum of two (2) weeks (80) hours secretarial and clerical time was expended in dictation, typing, and the organization and filing of material pertinent to this litigation.

It is my estimate that the time and materials necessary to the defense of this litigation represent a total minimum cost of $5,000.00.

/S/DANIEL M. GUNN
Daniel M. Gunn

(Subscription Omitted in Printing)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION
NO. 75-0548-S

J. D. MONK, *Et Al*
Plaintiffs

vs.

ROADWAY EXPRESS, INC., *Et Al*
Defendants

Affidavit of John L. Schober, Jr., in Support of the Defendants' Request for Attorneys' Fees and Expenses

STATE OF LOUISIANA
PARISH OF CADDO } SS.:

BEFORE ME, the undersigned authority, personally came and appeared JOHN L. SCHOBER, JR., who deposed and stated:

That Affiant is a member of the Law Firm of Fiest, Schober & Howell, 806 Mid South Towers, Shreveport, Louisiana. Affiant was contacted by Messrs. Edward C. Kaminski, General Counsel for Roadway Express, Inc., and M. Curtiss McKee, attorney at law of the Law Firm of Fuselier, Ott, McKee & Flowers, Jackson, Mississippi, in connection with the above cause. Both counsel requested that Affiant consent to be associated as local counsel in the representation of the defendant, Roadway Express, Inc., in said cause. These contacts were made on August 7, 1976.

EXHIBIT D

There is annexed hereto and made a part hereof a copy of the statement rendered by the Law Firm of Feist, Schober & Howell to Roadway Express, Inc. dated July 7, 1976. That the original of such statement for services and expenses has actually been forwarded to Roadway Express, Inc. for payment. That the itemizations contained in the annexed statement accurately reflect the services rendered and the time and expenses expended in connection with this representation.

Affiant well and truly believes that all of the charges reflected on the annexed statement were reasonable and necessary for proper representation of the defendant, Roadway Express, Inc., and said charges are in accordance with customary fees in Shreveport, Louisiana. The total amount of fees and expenses charged by this firm to Roadway Express, Inc. in connection with this litigation, as reflected on the annexed bill, are in the full amount of $5,140.80.

/S/JOHN L. SCHOBER, JR.
John L. Schober, Jr.

SWORN TO AND SUBSCRIBED before me, Notary, at Shreveport, Louisiana, on this 8th day of July, 1976.

/s/JOE CORDILL, JR.
NOTARY PUBLIC in and for
Caddo Parish, LA.

SHREVEPORT, LA. July 7, 1976

Roadway Express, Inc.
c/o Mr. M. Curtiss McKee
2100 Deposit Guaranty Plaza
Jackson, Mississippi 39201

In Account With

FEIST, SCHOBER & HOWELL
Attorneys at Law
Mid South Towers
Shreveport, Louisiana 71101

To Professional Services Rendered and Expenses Incurred:

Re: J. D. Monk, et al v. Roadway Express, Inc., et al.

Aug. 7, 1975	—Two telephone conferences with Mr. Edward C. Kaminski, General Counsel for Roadway Express, Inc.; Telephone conference with Mr. M. Curtiss McKee.
Aug. 9, 1975	—Receipt and review of original complaint.
Aug. 11, 1975	—Review and preliminary legal research.
Aug. 19, 1975	—Telephone conference with Mr. McKee.
Aug. 21, 1975	—Telephone conferences with Mr. McKee; Attempts to contact Mr. Robert Piper, Jr. by telephone; Dictation and preparation of letter to Mr. Piper.
Aug. 22, 1975	—Legal Research; Preparation

Aug. 25, 1975	—of Motion for extension of time within which to plead and Memorandum Brief in support of said Motion.
Aug. 26, 1975	—Telephone conferences with Mr. McKee and filing of Motion and Brief for extension of time within which to plead.
Aug. 27, 1975	—Telephone conferences with Mr. McKee; Preparation of Motion to set aside entry of default and affidavit in support of said Motion; Filing of Motion; Dictation and preparation of a joint Stipulation and Order to set aside a preliminary default and an extension of time within which to plead and delivery thereof with transmittal letter to Mr. Piper.
Aug. 29, 1975	—Receipt and review of proposed answer prepared by Mr. Kaminski; Telephone conference with Mr. McKee.
Sept. 2, 1975	—Preparation and obtaining of Order from Hon. Ben C. Dawkins, Jr., District Judge, vacating default judgment and enlargement of time in which to plead; Dictation and preparation of letter to Mr. Kaminski and Mr. McKee forwarding Motions, Stipulations and Order; Dictation and preparation of letter to Mr. McKee regarding proposed answer to be filed to the original complaint.
Sept. 27, 1975	—Receipt and review of answer to original complaint from Mr. McKee.

Sept. 30, 1975 —Filing of answer to original complaint.

Oct. 8, 1975 —Telephone conferences with Messrs. McKee and Kaminski.

Oct. 13, 1975 —Telephone conference with Mr. McKee.

Nov. 11, 1975 —Telephone conferences with Mr. McKee regarding answers to interrogatories propounded by plaintiffs.

Nov. 13, 1975 —Legal Research; Filing of Motion for enlargement of time within which to answer interrogatories.

Nov. 14, 1975 —Obtaining of Order from Hon. Ben C. Dawkins, Jr., Senior Judge, granting said Motion.

Nov. 18, 1975 —Receipt and review of answer filed by Messrs. Mullinax, Wells, Mauzy & Baab, counsel for Teamsters Local 568.

Nov. 19, 1975 —Dictation and preparation of letter to Mr. McKee forwarding copies of Motions and copy of answer from Local 568.

Dec. 22, 1975 —Transmittal of trial and Pretrial Calendar to all counsel.

Dec. 29, 1975 —Telephone conferences with Messrs. McKee and Kaminski.

Dec. 31, 1975 —Telephone conference with Mr. McKee.

Jan. 2, 1975 —Telephone conferences with Messrs. McKee and Kaminski.

Jan. 5, 1976 —Preparation of Motion and Order for continuance or Pretrial and Trial; Conference in Shreveport with Mr. McKee and Messrs. Piper and Brown.

Jan. 6, 1976 —Filing of Motion and Order for continuance; Motion and Order denied; Transmittal of Motion and Order to Mr. Kaminski; Conference with Mr. McKee in Shreveport.

Jan. 8, 1976 —Several conferences with the office of Mr. McKee regarding Mr. McKee's illness and inability to appear for pre-trial or trial; telephone conferences with Mr. Kaminski.

Jan. 9, 1976 —Telephone conferences with Judge Dawkin's office and Mr. Robert Piper regarding continuance; Telephone conferences with Mr. Kaminski.

Feb. 5, 1976 —Telephone conferences with Mr. McKee.

Mar. 17, 1976 —Telphone conferences with Messrs. McKee and Kaminski.

Mar. 22, 1976 —Telephone conferences with Messrs. McKee and Kaminski.

Mar. 27, 1976 —Legal Research; Filing of Motion and Order to compel plaintiffs to answer interrogatories propounded by defendant, Roadway Express, Inc.

Apr. 7, 1976 —Telephone conference with Mr. McKee.

Apr. 8, 1976 —Telephone conference with Mr. McKee.

Apr. 13, 1976 —Preparation and obtaining of order from United States Magistrate ordering plaintiffs to show cause why they should not be compelled to answer the interrogatories propounded by Roadway Express, Inc. and to show cause why

sanctions should not be imposed; Dictation and preparation of Notice of taking depositions of all plaintiffs.

Apr. 14, 1976 —Filing of Notice of taking of depositions of all three plaintiffs.

Apr. 21, 1976 —Legal Research; Two appearances before United States Magistrate on rule to show cause and obtaining order compelling answers to interrogatories by May 24, 1976; Conference with Mr. Piper regarding scheduling of depositions.

Apr. 22, 1976 —Dictation and preparation of letter to Mr. Piper regarding depositions.

Apr. 27, 1976 —Receipt and review of Motion to Dismiss or, Alternatively, Motion for Summary Judgment, Notice of Motion, Affidavit of Mr. Daniel N. Gunn, Memorandum of Authorities in Suport of Motion to Dismiss or, Alternatively, Motion for Summary Judgment; Legal Research; Filing of said Motion, Notice and Memorandum.

May 4, 1976 —Two telephone conferences with Mr. McKee regarding depositions; Telephone conference with Mr. Piper.

May 5, 1976 —Dictation, preparation and hand delivery of letter to Mr. Piper concerning depositions; Conference in Shreveport with Mr. McKee.

May 6 & 7, 1976 —Taking of depositions of two plaintiffs in Shreveport, Louisiana.

May 10, 1976 —Telephone conference with Mr. McKee.

May 12, 1976 —Receipt and review of Motion to Dismiss the claim of plaintiff McPherson for failure to appear at deposition, Affidavit of John L. Schober, Jr., Affidavit of Joe Cordill, Jr., Memorandum in Support of Motion to Dismiss McPherson's claim.

May 14, 1976 —Two telephone conferences with Mr. McKee; Preparation of letter to Judge Dawkins, and filing of Motions and Affidavits delineated above.

June 2 & 3, 1976 —Preparation of Motions and rule to show cause why the complaints of the plaintiffs should not be dismissed for failure to timely answer interrogatories with supporting memoranda; Telephone conference with Mr. McKee.

June 4, 1976 —Filing of said Motions.

June 11, 1976 —Telephone conference with Mr. McKee.

June 14 & 15, 1976 —Receipt and review of depositions; Legal research; Telephone conference with Mr. McKee.

June 16, 1976 —Transmittal of depositions to Mr. McKee.

June 18, 1976 —Telephone conference with Mr. McKee.

TOTAL HOURS TO JUNE 18, 1976 - 91½ hours

June 24, 1976 —Receipt and review of Motion for Continuance of rule to show cause filed by plaintiffs; Telephone conference with Mr. McKee.

June 29, 1976 —Conference in Shreveport between Messrs. McKee, Cordill and Schober and legal research.

June 30, 1976 —Court appearance for oral argument of Motions to dismiss the complaint of all three plaintiffs for failure to answer interrogatories and for the imposition of sanctions and Motion to Dismiss complaint of plaintiff McPherson for failure to appear at deposition; Entry of Order dismissing plaintiffs' complaints without prejudice; Defendants' counsel given ten days to enter memoranda and data concerning sanctions.

ATTORNEYS FEE through June 18, 1976 91½ hours at $50.00 per hour	$4,575.00
ATTORNEYS FEE June 19 through June 30, 1976—9½ hours at $50.00 per hour	475.00
TOTAL ATTORNEYS FEE	5,050.00

EXPENSES incurred through June 18, 1976

Long Distance Calls	$ 62.80
Xeroxing costs	28.00
	90.80
TOTAL	$5,140.80